

REMARKS

This is in response to the Office Action that was mailed on April 21, 2004. The claims are amended to emphasize the batch nature of the presently claimed invention. The fact that batches of inflators are treated in this invention is apparent, e.g., from the depiction of batches of inflators in Figures 1 and 3. It is noted also that the plural form "inflators" is used throughout the specification. Claim 4 is amended to provide explicit antecedent basis for its recitation of "the furnace". No new matter is introduced by this Amendment. Claims 1, 2, and 4, as amended, remain in the application.

Claim 4 was rejected under the second paragraph of 35 U.S.C. §112, due to alleged proper antecedent basis for its recitation of "the furnace". This ground of rejection is obviated by an amendment to claim 4.

Claims 1-3 were rejected under 35 U.S.C. §103(a) as being unpatentable over EP 0 677 336 A1 (Nakasato) in view of US 5,294,244 (Allerton) and US 3,793,101 (Mullarkey). The rejection is respectfully traversed.

ERRONEOUS TRANSLATION. The Examiner alleges that

Nakasato et al. (page 3, lines 32-51) discloses an inflator processing apparatus comprising a processing furnace (i.e., heating furnace; page 3, lines 36-37), wherein a partition wall (i.e. baffles; page 3, lines 49-51) is provided between an inner surface of a wall of the processing furnace and the inflator.

Office Action, page 3. However, EP 0 677 336 A1 contains a translation error precisely in the portion upon which the Examiner relies. EP 0 677 336 A1 is based upon JP 71912/94, and the portion of the disclosure in question is based upon paragraph [0027] in JP 71912/94. A correct, full English translation of paragraph [0027] of JP 71912/94 is as follows:

Provision must also be made in the furnace to accommodate such rapid generation of gases and fluctuating pressures, e.g. buffer, as well as to provide for cleaning the gas generated to make it environmentally suitable for release to the atmosphere.

This means that it is proposed to provide a buffer space in the furnace to overcome (or absorb) a rapid change of pressure of the furnace. Such an advantage, of course, cannot be obtained with "baffles". A furnace with a baffle instead of a buffer would not function in the desired manner.

The reference in question is concerned with treatment of contaminants, such as toxic materials, included in inflators. One of ordinary skill in the art would recognize that a baffle is neither necessary nor even usable in the treatment process described by the reference. In short, the passage in EP 0 677 336 A1 (Nakazato) upon which the Examiner relies is meaningless with respect to its technology. It is respectfully submitted that a reference description lacking technical sense may not properly be relied upon in formulating a rejection.

FEATURE NOT DISCLOSED. Even with its erroneous teaching, moreover, the Examiner appears to concede that Nakasato fails to teach or suggest the charging module required by the present

claims, and relies upon Mullarkey to remedy the deficiency of the Nakasato reference. In Mullarkey,

[For lightweight charges,] ...a light source 60 provides a light beam across light charge conveyor 3 in a manner to be interrupted by a light charge thereon. Photosensitive device 61 is positioned opposite light source 60. As an object such as an exploded light charge is moved along by conveyor 3, it interrupts the light beam to photosensitive device 61. This interruption initiates a time delay relay. As the object proceeds further, it comes into the view of temperature detector 63. ... Heavy charge conveyor 2 has a similar control consisting of light source 64, photosensitive device 65 and temperature detector 66. The operation of these elements is exactly the same as the safety elements discussed above with regard to conveyor 3. However, due to the fact that the heavy charge conveyed by conveyor 2 may explode with a substantial noise, and explosion detector may be substituted **for the temperature detector** 66.

Column 5 (emphasis supplied). Thus, Mullarkey teaches the invariable necessity of direct detection of physical presence of unexploded charges (by means of beams of light).

Nothing in the Nakasato or Mullarkey or Allerton references teaches or suggests "**comparing** a total number of charged inflators located in the apparatus with an observed number of peak points of furnace pressure", as is expressly required by the present claims. Accordingly, the rejection of record cannot be sustained.

IMPROPER HINDSIGHT. The number of different references combined by the Examiner to reject the claims herein raises the question of whether the rejection as stated involves improper hindsight. The rigorous burden placed upon an Examiner for establishing a *prima facie* case of obviousness was reviewed by the United States Court of Appeals for the Federal Circuit in *In re*

Lee, 61 USPQ2d 1430, (Fed. Cir. 2002). In *Lee*, the court observed:

When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the *Graham* factors).

... In *re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."); In *re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); In *re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) ("teachings of references can be combined only if there is some suggestion or incentive to do so.") (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

The need for specificity pervades this authority. See, e.g., In *re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); In *re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In *re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

CONCLUSION. It is respectfully urged that the Examiner has not met her burden of proof of unobviousness with respect to the rejection of record over various features allegedly described (separately) in Nakasato, Allerton, and Mullarkey.

In any event, as discussed above, none of the references of record teaches or suggests "*comparing* a total number of charged inflators located in the apparatus with an observed number of peak points of furnace pressure", as is expressly required by the present claims.

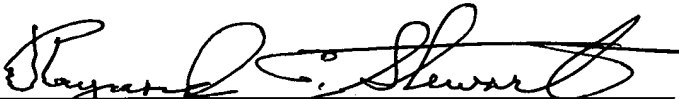
If the Examiner has any questions concerning this application, she is respectfully requested to contact Richard Gallagher, Reg. No. 28,781, at (703) 205-8008.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a three (3) month extension of time for filing a reply in connection with the present application, and the required fee of \$980.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
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By



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